THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION Nos.10125 and 14269 of 2001

Dated:08.10. 2007

W.P.No.10125 of 2001:

Between:

Mubashera Begum and two others.

.. Petitioners

And

The Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982, B.R.K.R. Buildings, Tank Bund Road, Hyderabad and seven others.

. Respondents

and another case.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION Nos.10125 and 14269 of 2001

COMMON ORDER: (per Hon'ble Sri Justice B. Prakash Rao)

Since these two Writ Petitions arise out of a common order, they are taken up together for disposal.

The petitioners in W.P.No.10125 of 2001 are the respondents 7 and 8 whereas the petitioners in W.P.No.14269 of 2001 are the respondents 1 to 3 before the special Court, who by way of these two Writ Petitions sought a writ of Certioari challenging the correctness of the judgment dated 30.03.2001 in L.G.C.No.35 of 1991 on the file of the special Court under A.P. Land Grabbing (Prohibition) Act at Hyderabad, allowing an application filed by the second respondent herein/State under Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1980 (for brevity 'the Act') seeking declaration that the petitioners are the land grabbers and as such they are liable to be evicted.

Heard Sri D. Prakash Reddy, Senior Counsel for P. Venkat Reddy appearing on behalf of the petitioners in W.P.No.10125 of 2001,

Sri Vedula Venkataramana, Senior Counsel for Sri V.R.N. Prasanth appearing on behalf of the petitioners in W.P.No.14269 of 2001 and the learned Advocate General appearing on behalf of the second respondent/State.

Briefly stated the facts of the case are that in respect of a land in Plot No.11 of Jubilee Hills Municipality, the second respondent/State had initially filed three applications in L.G.C.Nos.31, 38 of 1991 and the present one seeking similar such direction on the ground that the property is a Government property whereas the same was being uniformly contested by the petitioners herein, who are the respondents therein and also the respondents in those other two L.G.Cs. on a plea that the property in fact belonged to Jubilee Hills Municipality and the same was allotted to one Smt. Sofia Begum, who was shown as 5th respondent, and who in turn sold to Smt. Rangamma and Smt. Ahmed Bee under a sale deed dated 12.04.1965, who are also added as respondents 4 and 6 and the said plot No.11 was again made into 12 plots as sub-plots and they were sold to different persons. Of which, sub-plot No.4 was claimed to have purchased by the petitioners in W.P.No.14269 of 2001 whereas the petitioners in the other Writ Petition No.10125 of 2001 claimed to have purchased the other sub-plots 4A, 4B and 4C and hence, they denied the title of the

respondent/State and further claimed that they are not the land grabbers and not entitled to be evicted. From the very pleadings, which have been set forth on these two sets of petitions, there is a clear dispute in regard to their title and ownership. However, the fact remains that on all the aspects including the pleadings, evidence, claims and the material, which have been relied on by both the sides run on the self-same lines in all these three L.G.Cs. as referred to above. However, two L.G.Cs. 31 and 38 of 1991 were allowed by the special Court as per the judgment dated 28.07.1993 holding that those respondents are in possession of the land as land grabbers, however, benefit under Section 8 (7) of the Act was provided to them for payment of compensation in respect of the said property in their possession. Subsequently the present case has been taken up where again on behalf of the second respondent/State herein, P.Ws.1 to 3 were examined and Exs.A.1 to A.16 were marked and on behalf of the petitioners herein, R.Ws.1 to 8 were examined and Exs.B.1 to B.89 were marked apart from the other documents marked as Exs.C.1 to C.7 through the Advocate Commissioner. On a consideration of the entire evidence, material and especially taking in view of the finding, which has already been arrived at in the other two L.G.C. Nos.31 and 38 of 1991, the special Court did not find favour with the petitioners herein and allowed the claim of the second respondent/State holding that the

petitioners are the land grabbers and entitled to be evicted. Even the claim for payment of compensation on par with the orders passed in those two L.G.C. Nos.31 and 38 of 1991 was rejected mainly on the ground that the petitioners herein are not in possession on the same lines as that of the respondents in those two L.G.Cs. Hence, these two Writ Petitions.

Both the counsel appearing on behalf of the petitioners once again taking us through the entire facts, material and on merits sought to contend that having regard to the claim as established by the State and even though they were declared as land grabbers, the special Court ought to have given the self-same relief for payment of compensation on par with the respondents in the other two L.G.C.Nos.31 and 38 of 1991. There is no serious dispute in regard to title as such nor any further attempt to contradict the finding as arrived at by the special Court on the title, which has been rejected.

The learned Advocate General appearing on behalf of the second respondent/State repelling the aforesaid contentions contended that having regard to the findings as arrived at by the special Court denying in regard to the right, title and possession, the question of payment of compensation does not arise and there is no enforceable right as such in favour of the petitioners.

Upon considering the submissions made on both the sides and

on perusal of the material available on record, the only question, which arises for consideration in these two Writ Petitions is as to whether which of the petitioners can be directed to pay compensation in view of the eviction as ordered by the special Court ?

There is no serious dispute in regard to the aforesaid chequered events, which led to filing the present case along with the other two cases in L.G.C.Nos.31 and 38 of 1991 and all the three applications are in respect of the property covered by Plot No.11 of Jubilee Hills Municipality.

The case of the second respondent/State is to the effect that it is a Government property whereas the case of the petitioners herein and the respondents in other two L.G.Cs. is that they are the owners of the property and they have purchased the same from a common predecessor-in-title namely Sofia Begum and where after there has been change of hands. Above all, there is also a clear dispute *inter se* between these two sets of petitioners in these two Writ Petitions in respect of the very same property, identity and also possession apart from the ownership. There is also no dispute to the fact that in the other two applications in L.G.C.Nos.31 and 38 of 1991, the special Court as per the judgment dated 28.07.1993 held that the respondents therein are the land grabbers, however, since it was found that they were in possession, an alternative relief of payment of compensation

for regularization thereof was granted. It is this later portion on which strong reliance sought to be placed by the petitioners in these Writ Petitions seeking virtually the same directions of payment of compensation for regularization and which according to them are prepared to comply. However, before considering the said aspect as to the entitlement for payment of any compensation for regularization, now a question arises incidentally in these two Writ Petitions is in addition a rival dispute between these two sets of petitioners. There is a dispute about the title and also about possession. The special Court, by taking into consideration the judgment in L.G.C.Nos.31 and 38 of 1991, which has been marked as Exs.A.13, held that the very same finding in favour of the respondents therein would constitute *Res judicata* and it is not open to either of these two sets of the petitioners to resile there from and contend otherwise. Therefore, it was taking to hold that the State has established its title and the same is conclusive and binding in these proceedings.

Further going back in the *inter se* dispute between these two sets of the petitioners, though an attempt was made from both the sides to prove their valid and good title in compare to the other, it was found that the same cannot be accepted having regard to the findings, which have been arrived at in L.G.C.Nos.31 and 38 of 1991. That apart, it was a categorical finding by the special Court that the petitioners in

W.P.No.14269 of 2001 are not in possession of the sub-plot No.4 of Plot No.11 nor there is any material to prove the same and it was further held that any such direction to pay compensation would only mean to say that would amount to putting these petitioners in possession which runs contrary to the findings already given. Similar is the fact that even in regard to the petitioners in W.P.No.10125 of 2001 where also it was found that there was neither any title nor any possession. For considering as to the validation in respect of any land grabbing requires a finding to the effect that those persons are in possession and it is only then the question of regularization of possession arises and even such a power to regularize is purely a discretionary one and has to be weighed with differently on the facts of each case. When it is only found that there has been a genuine claim and assertion of title in their own way *bona fide* and ultimately found that they are held to be the land grabbers, the Court is empowered to give such directions for regularizing such possession on payment of compensation whereas in these cases, the entire claim and title have already been stood rejected in the earlier batch of those two L.G.Cs. and also reiterated that once title *prima facie* goes and the possession is also not being established, it is not open to the petitioners herein to restrict any claim as such for payment of compensation and to seek

any regularization as such. As rightly held by the special Court that when it was found that they are not in possession, the question of giving any direction for payment of compensation for regularization does not arise. That apart the findings both as to ownership, identity and possession are purely that of fact based on appreciation of the material produced on either side. This Court would not venture to go into the same or make any re-appreciation thereof to come to any varied conclusion in exercise of powers under Article 226 of the Constitution of India.

Even otherwise, it has to be seen that such power has to be exercised very carefully and as pointed out only in genuine cases where it has been found practically impossible for accepting the *bona fides* of such persons in possession whereas in these cases, there is no such attempt nor there is anything to show that their claim of possession is *bona fide* or there is any possession. In view of the same, we do not find any merits in the submissions made on behalf of the petitioners for allowing them to pay compensation. As rightly pointed out, any such indulgence would only lead to a situation where the petitioners had to be put back in possession or held to be in possession, which runs contrary to the earlier findings. Hence, we hold that the petitioners have no right nor entitled to any such relief for regularization by any payment of compensation. Hence, there are no

merits in these two Writ Petitions.

These two Writ Petitions are dismissed. No costs.

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B. PRAKASH RAO, J

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G. BHAVANI PRASAD, J

8th October 2007.
Chvn.